REMARKS

Claims 1-3, 5-8, 10-20, 22-25, 27-40, 42, and 44-47 are pending in this application. Claims 1-3, 5-8, 10-17, 24, and 28 are allowed. Claims 18-20, 22, 23, 25, 27, 29-37, 42, and 44-47 are rejected. Claims 38-40 are allowable, subject to objection. Claims 18-20, 22-25, 27-40, 42, and 44-47 are currently amended.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Fault Tolerant PON Technologies* (Gerla) in view of US 5,914,798 (Liu). As indicated by Applicant in the previous response, both Gerla and Liu teach use of alternate paths between the same endpoints. The claims distinguish the combination of Gerla and Liu by reciting use of primary and backup end systems, rather than primary and backup paths between the same end systems. The Examiner apparently concedes this characterization of Gerla and Liu, but indicates that the argument is unpersuasive because: (1) intermediate nodes in an alternate path between the same endpoints are equivalent to a backup end system; and (2) the different end systems are recited in the preambles of the independent claims.[1]

With regard to reason (1), Applicant traverses on the grounds that the intermediate nodes do not perform the function of the end system and therefore are not equivalent to end systems. The primary and backup end systems could provide, for example, data storage services. If an Enterprise requires storage of a terabyte of data per day, and the primary storage site fails, there is no practical chance of storing that amount of data on an intermediate switch or router. Alternatively, the primary and backup end systems could include application servers. If the primary storage site fails, there is no practical chance of an intermediate switch or router becoming an application server. It is clear, therefore, that simply being connected to another

intermediate node in another path as results from the combination described by the Examiner is not equivalent in any meaningful way to being connected to an alternate end system which provides a required service.

With regard to reason (2), Applicant submits that the Examiner has misconstrued the legal effect of the preamble. Any terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation. See, e.g., *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1257, 9 USPQ2d 1962, 1966 (Fed. Cir. 1989); *Pac-Tec Inc. v. Amerace Corp.*, 903 F.2d 796, 801, 14 USPQ2d 1871, 1876 (Fed. Cir. 1990).[2] Nevertheless, claims 18, 27, 30 and 32 are amended to incorporate the preamble limitations into the body of the claim in order to expedite prosecution. The Examiner must therefore now accord patentable weight to that language.

The dependent claims are allowable for the same reasons as their respective base claims. The addition of US 5,138,615 (Lamport) in the rejection of claims 22, 23 and 25, and the addition of US 5,252,288 (Frey) in the rejection of claims 27, 29, 30, 32, 34-36 and 44, and the addition of both Frey and Lamport in the rejection of claims 31, 33, 37, 42, 45, 46, and 47 all fail to teach every recited limitation for the same reasons recited above. Withdrawal of all rejections is therefore requested.

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[1] OA dated 07/02/2007 at page 10
[2] See MPEP 2111.02 I

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited. Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-4001 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

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